
SUBSTITUTE SENATE BILL 5378

State of Washington

60th Legislature

2007 Regular Session

By Senate Committee on Judiciary (originally sponsored by Senators Weinstein, Kline and Rockefeller)

READ FIRST TIME 02/13/07.

1 AN ACT Relating to deeds of trust; and amending RCW 61.24.005,
2 61.24.010, 61.24.030, 61.24.040, 61.24.045, 61.24.130, and 61.24.135.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 61.24.005 and 1998 c 295 s 1 are each amended to read
5 as follows:

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Grantor" means a person, or its successors, who executes a
9 deed of trust to encumber the person's interest in property as security
10 for the performance of all or part of the borrower's obligations.

11 (2) "Beneficiary" means the holder of the instrument or document
12 evidencing the obligations secured by the deed of trust, excluding
13 persons holding the same as security for a different obligation.

14 (3) "Affiliate of beneficiary" means any entity which controls, is
15 controlled by, or is under common control with a beneficiary.

16 (4) "Trustee" means the person designated as the trustee in the
17 deed of trust or appointed under RCW 61.24.010(2).

18 (5) "Borrower" means a person or a general partner in a
19 partnership, including a joint venture, that is liable for all or part

1 of the obligations secured by the deed of trust under the instrument or
2 other document that is the principal evidence of such obligations, or
3 the person's successors if they are liable for those obligations under
4 a written agreement with the beneficiary.

5 (6) "Guarantor" means any person and its successors who is not a
6 borrower and who guarantees any of the obligations secured by a deed of
7 trust in any written agreement other than the deed of trust.

8 (7) "Commercial loan" means a loan that is not made primarily for
9 personal, family, or household purposes.

10 (8) "Trustee's sale" means a nonjudicial sale under a deed of trust
11 undertaken pursuant to this chapter.

12 (9) "Fair value" means the value of the property encumbered by a
13 deed of trust that is sold pursuant to a trustee's sale. This value
14 shall be determined by the court or other appropriate adjudicator by
15 reference to the most probable price, as of the date of the trustee's
16 sale, which would be paid in cash or other immediately available funds,
17 after deduction of prior liens and encumbrances with interest to the
18 date of the trustee's sale, for which the property would sell on such
19 date after reasonable exposure in the market under conditions requisite
20 to a fair sale, with the buyer and seller each acting prudently,
21 knowledgeably, and for self-interest, and assuming that neither is
22 under duress.

23 (10) "Record" and "recorded" includes the appropriate registration
24 proceedings, in the instance of registered land.

25 (11) "Person" means any natural person, or legal or governmental
26 entity.

27 (12) "Residential property" means property upon which four or fewer
28 residential units are located and one of the residential units is
29 occupied by the borrower or the borrower's minor or dependent children
30 as their principal residence from and after the date the foreclosure is
31 commenced.

32 **Sec. 2.** RCW 61.24.010 and 1998 c 295 s 2 are each amended to read
33 as follows:

34 (1) The trustee of a deed of trust under this chapter shall be:

35 (a) Any domestic corporation incorporated under Title 23B, 30, 31,
36 32, or 33 RCW of which at least one officer is a Washington resident;
37 or

1 (b) Any title insurance company authorized to insure title to real
2 property under the laws of this state, or its agents; or

3 (c) Any attorney who is an active member of the Washington state
4 bar association at the time the attorney is named trustee; or

5 (d) Any professional corporation incorporated under chapter 18.100
6 RCW, any professional limited liability company formed under chapter
7 25.15 RCW, any general partnership, including limited liability
8 partnerships, formed under chapter 25.04 RCW, all of whose
9 shareholders, members, or partners, respectively, are either licensed
10 attorneys or entities, provided all of the owners of those entities are
11 licensed attorneys, or any domestic corporation wholly owned by any of
12 the entities under this subsection (1)(d); or

13 (e) Any agency or instrumentality of the United States government;
14 or

15 (f) Any national bank, savings bank, or savings and loan
16 association chartered under the laws of the United States.

17 (2) The trustee may resign at its own election or be replaced by
18 the beneficiary. The trustee shall give prompt written notice of its
19 resignation to the beneficiary. The resignation of the trustee shall
20 become effective upon the recording of the notice of resignation in
21 each county in which the deed of trust is recorded. If a trustee is
22 not appointed in the deed of trust, or upon the resignation,
23 incapacity, disability, absence, or death of the trustee, or the
24 election of the beneficiary to replace the trustee, the beneficiary
25 shall appoint a trustee or a successor trustee. Upon recording the
26 appointment of a successor trustee in each county in which the deed of
27 trust is recorded, the successor trustee shall be vested with all
28 powers of an original trustee.

29 (3) The trustee or successor trustee shall have no fiduciary duty
30 or fiduciary obligation to the grantor or other persons having an
31 interest in the property subject to the deed of trust.

32 (4) The trustee or successor trustee shall have a duty of fairness
33 and impartiality to the grantor, beneficiary, and other person having
34 an interest in the property subject to the deed of trust.

35 **Sec. 3.** RCW 61.24.030 and 1998 c 295 s 4 are each amended to read
36 as follows:

37 It shall be requisite to a trustee's sale:

- 1 (1) That the deed of trust contains a power of sale;
- 2 (2) That the deed of trust contains a statement that the real
3 property conveyed is not used principally for agricultural purposes;
4 provided, if the statement is false on the date the deed of trust was
5 granted or amended to include that statement, and false on the date of
6 the trustee's sale, then the deed of trust must be foreclosed
7 judicially. Real property is used for agricultural purposes if it is
8 used in an operation that produces crops, livestock, or aquatic goods;
- 9 (3) That a default has occurred in the obligation secured or a
10 covenant of the grantor, which by the terms of the deed of trust makes
11 operative the power to sell;
- 12 (4) That no action commenced by the beneficiary of the deed of
13 trust is now pending to seek satisfaction of an obligation secured by
14 the deed of trust in any court by reason of the grantor's default on
15 the obligation secured: PROVIDED, That (a) the seeking of the
16 appointment of a receiver shall not constitute an action for purposes
17 of this chapter; and (b) if a receiver is appointed, the grantor shall
18 be entitled to any rents or profits derived from property subject to a
19 homestead as defined in RCW 6.13.010. If the deed of trust was granted
20 to secure a commercial loan, this subsection shall not apply to actions
21 brought to enforce any other lien or security interest granted to
22 secure the obligation secured by the deed of trust being foreclosed;
- 23 (5) That the deed of trust has been recorded in each county in
24 which the land or some part thereof is situated;
- 25 (6) That prior to the date of the notice of trustee's sale and
26 continuing thereafter through the date of the trustee's sale, the
27 trustee must (~~have~~) maintain a street address in this state where
28 personal service of process may be made, and the trustee must maintain
29 a physical presence and have telephone service at such address; and
- 30 (7) That at least thirty days before notice of sale shall be
31 recorded, transmitted or served, written notice of default shall be
32 transmitted by the beneficiary or trustee to the borrower and grantor
33 at their last known addresses by both first class and either registered
34 or certified mail, return receipt requested, and the beneficiary or
35 trustee shall cause to be posted in a conspicuous place on the
36 premises, a copy of the notice, or personally served on the borrower
37 and grantor. This notice shall contain the following information:

- 1 (a) A description of the property which is then subject to the deed
2 of trust;
- 3 (b) Each county in which the deed of trust is recorded and the
4 document number given to the deed of trust upon recording by each
5 county auditor or recording officer;
- 6 (c) That the beneficiary has declared the borrower or grantor to be
7 in default, and a concise statement of the default alleged;
- 8 (d) An itemized account of the amount or amounts in arrears if the
9 default alleged is failure to make payments;
- 10 (e) An itemized account of all other specific charges, costs, or
11 fees that the borrower, grantor, or any guarantor is or may be obliged
12 to pay to reinstate the deed of trust before the recording of the
13 notice of sale;
- 14 (f) The total of (d) and (e) of this subsection, designated clearly
15 and conspicuously as the amount necessary to reinstate the note and
16 deed of trust before the recording of the notice of sale;
- 17 (g) That failure to cure the alleged default within thirty days of
18 the date of mailing of the notice, or if personally served, within
19 thirty days of the date of personal service thereof, may lead to
20 recordation, transmittal, and publication of a notice of sale, and that
21 the property described in (a) of this subsection may be sold at public
22 auction at a date no less than one hundred twenty days in the future;
- 23 (h) That the effect of the recordation, transmittal, and
24 publication of a notice of sale will be to (i) increase the costs and
25 fees and (ii) publicize the default and advertise the grantor's
26 property for sale;
- 27 (i) That the effect of the sale of the grantor's property by the
28 trustee will be to deprive the grantor of all their interest in the
29 property described in (a) of this subsection; and
- 30 (j) That the borrower, grantor, and any guarantor has recourse to
31 the courts pursuant to RCW 61.24.130 to contest the alleged default on
32 any proper ground.

33 **Sec. 4.** RCW 61.24.040 and 1998 c 295 s 5 are each amended to read
34 as follows:

35 A deed of trust foreclosed under this chapter shall be foreclosed
36 as follows:

- 37 (1) At least ninety days before the sale, the trustee shall:

1 (a) Record a notice in the form described in RCW 61.24.040(1)(f) in
2 the office of the auditor in each county in which the deed of trust is
3 recorded;

4 (b) To the extent the trustee elects to foreclose its lien or
5 interest, or the beneficiary elects to preserve its right to seek a
6 deficiency judgment against a borrower or grantor under RCW
7 61.24.100(3)(a), and if their addresses are stated in a recorded
8 instrument evidencing their interest, lien, or claim of lien, or an
9 amendment thereto, or are otherwise known to the trustee, cause a copy
10 of the notice of sale described in RCW 61.24.040(1)(f) to be
11 transmitted by both first class and either certified or registered
12 mail, return receipt requested, to the following persons or their legal
13 representatives, if any, at such address:

14 (i) The borrower and grantor;

15 (ii) The beneficiary of any deed of trust or mortgagee of any
16 mortgage, or any person who has a lien or claim of lien against the
17 property, that was recorded subsequent to the recordation of the deed
18 of trust being foreclosed and before the recordation of the notice of
19 sale;

20 (iii) The vendee in any real estate contract, the lessee in any
21 lease, or the holder of any conveyances of any interest or estate in
22 any portion or all of the property described in such notice, if that
23 contract, lease, or conveyance of such interest or estate, or a
24 memorandum or other notice thereof, was recorded after the recordation
25 of the deed of trust being foreclosed and before the recordation of the
26 notice of sale;

27 (iv) The last holder of record of any other lien against or
28 interest in the property that is subject to a subordination to the deed
29 of trust being foreclosed that was recorded before the recordation of
30 the notice of sale;

31 (v) The last holder of record of the lien of any judgment
32 subordinate to the deed of trust being foreclosed; and

33 (vi) The occupants of property consisting solely of a single-family
34 residence, or a condominium, cooperative, or other dwelling unit in a
35 multiplex or other building containing fewer than five residential
36 units, whether or not the occupant's rental agreement is recorded,
37 which notice may be a single notice addressed to "occupants" for each
38 unit known to the trustee or beneficiary;

1 (c) Cause a copy of the notice of sale described in RCW
2 61.24.040(1)(f) to be transmitted by both first class and either
3 certified or registered mail, return receipt requested, to the
4 plaintiff or the plaintiff's attorney of record, in any court action to
5 foreclose a lien or other encumbrance on all or any part of the
6 property, provided a court action is pending and a lis pendens in
7 connection therewith is recorded in the office of the auditor of any
8 county in which all or part of the property is located on the date the
9 notice is recorded;

10 (d) Cause a copy of the notice of sale described in RCW
11 61.24.040(1)(f) to be transmitted by both first class and either
12 certified or registered mail, return receipt requested, to any person
13 who has recorded a request for notice in accordance with RCW 61.24.045,
14 at the address specified in such person's most recently recorded
15 request for notice;

16 (e) Cause a copy of the notice of sale described in RCW
17 61.24.040(1)(f) to be posted in a conspicuous place on the property, or
18 in lieu of posting, cause a copy of said notice to be served upon any
19 occupant of the property;

20 (f) The notice shall be in substantially the following form:

21 NOTICE OF TRUSTEE'S SALE

22 I.

23 NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the
24 day of,, at the hour of o'clock M. at
25 [street
26 address and location if inside a building] in the City of,
27 State of Washington, sell at public auction to the highest and best
28 bidder, payable at the time of sale, the following described real
29 property, situated in the County(ies) of, State of
30 Washington, to-wit:

31 [If any personal property is to be included in the trustee's
32 sale, include a description that reasonably identifies such
33 personal property]

34 which is subject to that certain Deed of Trust dated,
35, recorded,, under Auditor's File No.,
36 records of County, Washington, from, as
37 Grantor, to, as Trustee, to secure an obligation in

1 favor of, as Beneficiary, the beneficial interest in
2 which was assigned by, under an Assignment recorded
3 under Auditor's File No. [Include recording information for
4 all counties if the Deed of Trust is recorded in more than one county.]

5 II.

6 No action commenced by the Beneficiary of the Deed of Trust is now
7 pending to seek satisfaction of the obligation in any Court by reason
8 of the Borrower's or Grantor's default on the obligation secured by the
9 Deed of Trust.

10 [If there is another action pending to foreclose other security
11 for all or part of the same debt, qualify the statement and
12 identify the action.]

13 III.

14 The default(s) for which this foreclosure is made is/are as follows:

15 [If default is for other than payment of money, set forth the
16 particulars]

17 Failure to pay when due the following amounts which are now in arrears:

18 IV.

19 The sum owing on the obligation secured by the Deed of Trust is:
20 Principal \$, together with interest as provided in the note
21 or other instrument secured from the day of,,
22 and such other costs and fees as are due under the note or other
23 instrument secured, and as are provided by statute.

24 V.

25 The above-described real property will be sold to satisfy the expense
26 of sale and the obligation secured by the Deed of Trust as provided by
27 statute. The sale will be made without warranty, express or implied,
28 regarding title, possession, or encumbrances on the day of
29, The default(s) referred to in paragraph III must be
30 cured by the day of, (11 days before the sale
31 date), to cause a discontinuance of the sale. The sale will be
32 discontinued and terminated if at any time on or before the day
33 of,, (11 days before the sale date), the default(s)
34 as set forth in paragraph III is/are cured and the Trustee's fees and
35 costs are paid. The sale may be terminated any time after the

1 day of, . . . (11 days before the sale date), and before
2 the sale by the Borrower, Grantor, any Guarantor, or the holder of any
3 recorded junior lien or encumbrance paying the entire principal and
4 interest secured by the Deed of Trust, plus costs, fees, and advances,
5 if any, made pursuant to the terms of the obligation and/or Deed of
6 Trust, and curing all other defaults.

7 VI.

8 A written notice of default was transmitted by the Beneficiary or
9 Trustee to the Borrower and Grantor at the following addresses:

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11
12
13

14 by both first class and certified mail on the day of
15, . . ., proof of which is in the possession of the Trustee;
16 and the Borrower and Grantor were personally served on the day
17 of, . . ., with said written notice of default or the
18 written notice of default was posted in a conspicuous place on the real
19 property described in paragraph I above, and the Trustee has possession
20 of proof of such service or posting.

21 VII.

22 The Trustee whose name and address are set forth below will provide in
23 writing to anyone requesting it, a statement of all costs and fees due
24 at any time prior to the sale.

25 VIII.

26 The effect of the sale will be to deprive the Grantor and all those who
27 hold by, through or under the Grantor of all their interest in the
28 above-described property.

29 IX.

30 Anyone having any objection to the sale on any grounds whatsoever will
31 be afforded an opportunity to be heard as to those objections if they
32 bring a lawsuit to restrain the sale pursuant to RCW 61.24.130.
33 Failure to bring such a lawsuit may result in a waiver of any proper
34 grounds for invalidating the Trustee's sale.

1 [Add Part X to this notice if applicable under RCW 61.24.040(9)]

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4

..... , Trustee

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} Address
} Phone

9 [Acknowledgment]

10 (2) In addition to providing the borrower and grantor the notice of
11 sale described in RCW 61.24.040(1)(f), the trustee shall include with
12 the copy of the notice which is mailed to the grantor, a statement to
13 the grantor in substantially the following form:

14 NOTICE OF FORECLOSURE

15 Pursuant to the Revised Code of Washington,

16 Chapter 61.24 RCW

17 The attached Notice of Trustee's Sale is a consequence of
18 default(s) in the obligation to, the Beneficiary of your
19 Deed of Trust and owner of the obligation secured thereby. Unless the
20 default(s) is/are cured, your property will be sold at auction on the
21 day of,

22 To cure the default(s), you must bring the payments current, cure
23 any other defaults, and pay accrued late charges and other costs,
24 advances, and attorneys' fees as set forth below by the day of
25, . . . [11 days before the sale date]. To date, these
26 arrears and costs are as follows:

27		Estimated amount
28	Currently due	that will be due
29	to reinstate	to reinstate
30	on	on
31
32		(11 days before
33		the date set

for sale)

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Delinquent payments		
from,		
. . . , in the		
amount of		
\$. . . /mo.:	\$	\$
Late charges in		
the total		
amount of:	\$	\$
		Estimated
		Amounts
Attorneys' fees:	\$	\$
Trustee's fee:	\$	\$
Trustee's expenses:		
(Itemization)		
Title report	\$	\$
Recording fees	\$	\$
Service/Posting		
of Notices	\$	\$
Postage/Copying		
expense	\$	\$
Publication	\$	\$
Telephone		\$
charges	\$	
Inspection fees	\$	\$
.	\$	\$
.	\$	\$
TOTALS	\$	\$

To pay off the entire obligation secured by your Deed of Trust as of the day of you must pay a total of \$. in principal, \$. in interest, plus other costs and advances estimated to date in the amount of \$. From and after the date of this notice you must submit a written request to the Trustee to obtain the total amount to pay off the entire obligation secured by your Deed of Trust as of the payoff date.

1 As to the defaults which do not involve payment of money to the
 2 Beneficiary of your Deed of Trust, you must cure each such default.
 3 Listed below are the defaults which do not involve payment of money to
 4 the Beneficiary of your Deed of Trust. Opposite each such listed
 5 default is a brief description of the action necessary to cure the
 6 default and a description of the documentation necessary to show that
 7 the default has been cured.

8	Default	Description of Action Required to Cure and
9		Documentation Necessary to Show Cure
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16 You may reinstate your Deed of Trust and the obligation secured
 17 thereby at any time up to and including the . . . day of ,
 18 . . . [11 days before the sale date], by paying the amount set forth or
 19 estimated above and by curing any other defaults described above. Of
 20 course, as time passes other payments may become due, and any further
 21 payments coming due and any additional late charges must be added to
 22 your reinstating payment. Any new defaults not involving payment of
 23 money that occur after the date of this notice must also be cured in
 24 order to effect reinstatement. In addition, because some of the
 25 charges can only be estimated at this time, and because the amount
 26 necessary to reinstate or to pay off the entire indebtedness may
 27 include presently unknown expenditures required to preserve the
 28 property or to comply with state or local law, it will be necessary for
 29 you to contact the Trustee before the time you tender reinstatement or
 30 the payoff amount so that you may be advised of the exact amount you
 31 will be required to pay. Tender of payment or performance must be made
 32 to: , whose address is , telephone ()
 33 AFTER THE DAY OF , . . . , YOU MAY NOT
 34 REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND
 35 FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. The Trustee will
 36 respond to any written request for current payoff or reinstatement
 37 amounts within ten days of receipt of your written request. In such a

1 case, you will only be able to stop the sale by paying, before the
2 sale, the total principal balance (\$) plus accrued
3 interest, costs and advances, if any, made pursuant to the terms of the
4 documents and by curing the other defaults as outlined above.

5 You may contest this default by initiating court action in the
6 Superior Court of the county in which the sale is to be held. In such
7 action, you may raise any legitimate defenses you have to this default.
8 A copy of your Deed of Trust and documents evidencing the obligation
9 secured thereby are enclosed. You may wish to consult a lawyer. Legal
10 action on your part may prevent or restrain the sale, but only if you
11 persuade the court of the merits of your defense.

12 The court may grant a restraining order or injunction to restrain
13 a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the
14 trustee of the time when, place where, and the judge before whom the
15 application for the restraining order or injunction is to be made.
16 This notice shall include copies of all pleadings and related documents
17 to be given to the judge. Notice and other process may be served on
18 the trustee at:

19

20 NAME:

21 ADDRESS:

22

23 TELEPHONE NUMBER:

24 If you do not reinstate the secured obligation and your Deed of
25 Trust in the manner set forth above, or if you do not succeed in
26 restraining the sale by court action, your property will be sold. The
27 effect of such sale will be to deprive you and all those who hold by,
28 through or under you of all interest in the property;

29 (3) In addition, the trustee shall cause a copy of the notice of
30 sale described in RCW 61.24.040(1)(f) (excluding the acknowledgment) to
31 be published in a legal newspaper in each county in which the property
32 or any part thereof is situated, once on or between the thirty-fifth
33 and twenty-eighth day before the date of sale, and once on or between
34 the fourteenth and seventh day before the date of sale;

35 (4) On the date and at the time designated in the notice of sale,
36 the trustee or its authorized agent shall sell the property at public

1 auction to the highest bidder. The trustee may sell the property in
2 gross or in parcels as the trustee shall deem most advantageous;

3 (5) The place of sale shall be at any designated public place
4 within the county where the property is located and if the property is
5 in more than one county, the sale may be in any of the counties where
6 the property is located. The sale shall be on Friday, or if Friday is
7 a legal holiday on the following Monday, and during the hours set by
8 statute for the conduct of sales of real estate at execution;

9 (6) The trustee has no obligation to, but may, for any cause the
10 trustee deems advantageous, continue the sale for a period or periods
11 not exceeding a total of one hundred twenty days by (a) a public
12 proclamation at the time and place fixed for sale in the notice of sale
13 and by giving notice of the new time and place of the sale by both
14 first class and either certified or registered mail, return receipt
15 requested, to the persons specified in RCW 61.24.040(1) (b), (c), (d),
16 and (e) to be deposited in the mail (i) not less than four days before
17 the new date fixed for the sale if the sale is continued for up to
18 seven days; or (ii) not more than three days after the date of the
19 continuance by oral proclamation if the sale is continued for more than
20 seven days, or, alternatively, (b) by giving notice of the time and
21 place of the postponed sale in the manner and to the persons specified
22 in RCW 61.24.040(1) (b), (c), (d), and (e) and publishing a copy of
23 such notice once in the newspaper(s) described in RCW 61.24.040(3),
24 more than seven days before the date fixed for sale in the notice of
25 sale. No other notice of the postponed sale need be given;

26 (7) The purchaser shall forthwith pay the price bid and on payment
27 the trustee shall execute to the purchaser its deed; the deed shall
28 recite the facts showing that the sale was conducted in compliance with
29 all of the requirements of this chapter and of the deed of trust, which
30 recital shall be prima facie evidence of such compliance and conclusive
31 evidence thereof in favor of bona fide purchasers and encumbrancers for
32 value, except that these recitals shall not affect the lien or interest
33 of any person entitled to notice under RCW 61.24.040(1), if the trustee
34 fails to give the required notice to such person. In such case, the
35 lien or interest of such omitted person shall not be affected by the
36 sale and such omitted person shall be treated as if such person was the
37 holder of the same lien or interest and was omitted as a party
38 defendant in a judicial foreclosure proceeding;

1 (8) The sale as authorized under this chapter shall not take place
2 less than one hundred ninety days from the date of default in any of
3 the obligations secured.

4 (9) If the trustee elects to foreclose the interest of any occupant
5 or tenant of property comprised solely of a single-family residence, or
6 a condominium, cooperative, or other dwelling unit in a multiplex or
7 other building containing fewer than five residential units, the
8 following notice shall be included as Part X of the Notice of Trustee's
9 Sale:

10 X.

11 NOTICE TO OCCUPANTS OR TENANTS

12 The purchaser at the trustee's sale is entitled to possession of the
13 property on the 20th day following the sale, as against the grantor
14 under the deed of trust (the owner) and anyone having an interest
15 junior to the deed of trust, including occupants and tenants. After
16 the 20th day following the sale the purchaser has the right to evict
17 occupants and tenants by summary proceedings under the unlawful
18 detainer act, chapter 59.12 RCW.

19 (10) Only one copy of all notices required by this chapter need be
20 given to a person who is both the borrower and the grantor. All
21 notices required by this chapter that are given to a general
22 partnership are deemed given to each of its general partners, unless
23 otherwise agreed by the parties.

24 **Sec. 5.** RCW 61.24.045 and 1985 c 193 s 1 are each amended to read
25 as follows:

26 Any person desiring a copy of any notice of sale described in RCW
27 61.24.040(1)(f) under any deed of trust, other than a person entitled
28 to receive such a notice under RCW 61.24.040(1) (b) or (c), must, after
29 the recordation of such deed of trust and before the recordation of the
30 notice of sale, cause to be filed for record, in the office of the
31 auditor of any county in which the deed of trust is recorded, a duly
32 acknowledged request for a copy of any notice of sale. The request
33 shall be signed and acknowledged by the person to be notified or such
34 person's agent, attorney, or representative; shall set forth the name,
35 mailing address, and telephone number, if any, of the person or persons
36 to be notified; shall identify the deed of trust by stating the names
37 of the parties thereto, the date the deed of trust was recorded, the

1 legal description of the property encumbered by the deed of trust, and
2 the auditor's file number under which the deed of trust is recorded;
3 and shall be in substantially the following form:

4 REQUEST FOR NOTICE

5 Request is hereby made that a copy of any notice of sale described in
6 RCW 61.24.040(1)(f) under that certain Deed of Trust dated ,
7 ((19)) 20. . . , recorded on , ((19)) 20. . . , under
8 auditor's file No. , records of County,
9 Washington, from , as Grantor, to , as
10 Trustee, to secure an obligation in favor of , as
11 Beneficiary, and affecting the following described real property:

12 (Legal Description)

13 be sent by both first class and either registered or certified mail,
14 return receipt requested, to at

15 Dated this day of , ((19)) 20. . .

16
17 Signature

18 (Acknowledgment)

19 A request for notice under this section shall not affect title to, or
20 be deemed notice to any person that any person has any right, title,
21 interest in, lien or charge upon, the property described in the request
22 for notice.

23 **Sec. 6.** RCW 61.24.130 and 1998 c 295 s 14 are each amended to read
24 as follows:

25 (1) Nothing contained in this chapter shall prejudice the right of
26 the borrower, grantor, any guarantor, or any person who has an interest
27 in, lien, or claim of lien against the property or some part thereof,
28 to restrain, on any proper legal or equitable ground, a trustee's sale.
29 The court shall require as a condition of granting the restraining
30 order or injunction on the sale of nonresidential property that the
31 applicant pay to the clerk of the court the sums that would be due on
32 the obligation secured by the deed of trust if the deed of trust was
33 not being foreclosed:

34 (a) In the case of default in making the periodic payment of

1 principal, interest, and reserves, such sums shall be the periodic
2 payment of principal, interest, and reserves paid to the clerk of the
3 court every thirty days.

4 (b) In the case of default in making payment of an obligation then
5 fully payable by its terms, such sums shall be the amount of interest
6 accruing monthly on said obligation at the nondefault rate, paid to the
7 clerk of the court every thirty days.

8 (2) In the case of residential property, the court shall require as
9 a condition of granting the restraining order or injunction that the
10 applicant give security in such sum as the court deems proper, for the
11 payment of such costs and damages, including attorneys' fees, as may be
12 incurred or suffered by any party who is found to have been wrongfully
13 enjoined or restrained.

14 (3) In the case of default in performance of any nonmonetary
15 obligation secured by the deed of trust on nonresidential or
16 residential property, the court shall impose such conditions as it
17 deems just.

18 In addition, the court may condition granting the restraining order
19 or injunction of the sale of nonresidential or residential property
20 upon the giving of security by the applicant, in such form and amount
21 as the court deems proper, for the payment of such costs and damages,
22 including attorneys' fees, as may be later found by the court to have
23 been incurred or suffered by any party by reason of the restraining
24 order or injunction. The court may consider, upon proper showing, the
25 grantor's equity in the property in determining the amount of said
26 security.

27 ~~((+2))~~ (4) No court may grant a restraining order or injunction to
28 restrain a trustee's sale of nonresidential or residential property
29 unless the person seeking the restraint gives five days notice to the
30 trustee of the time when, place where, and the judge before whom the
31 application for the restraining order or injunction is to be made.
32 This notice shall include copies of all pleadings and related documents
33 to be given to the judge. No judge may act upon such application
34 unless it is accompanied by proof, evidenced by return of a sheriff,
35 the sheriff's deputy, or by any person eighteen years of age or over
36 who is competent to be a witness, that the notice has been served on
37 the trustee.

1 (~~(+3)~~) (5) If the restraining order or injunction is dissolved
2 after the date of the trustee's sale set forth in the notice as
3 provided in RCW 61.24.040(1)(f), the court granting such restraining
4 order or injunction, or before whom the order or injunction is
5 returnable, shall, at the request of the trustee, set a new sale date
6 which shall be not less than forty-five days from the date of the order
7 dissolving the restraining order. The trustee shall:

8 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
9 (f) at least thirty days before the new sale date; and

10 (b) Cause a copy of the notice of trustee's sale as provided in RCW
11 61.24.040(1)(f) to be published in a legal newspaper in each county in
12 which the property or any part thereof is situated once between the
13 thirty-fifth and twenty-eighth day before the sale and once between the
14 fourteenth and seventh day before the sale.

15 (~~(+4)~~) (6) If a trustee's sale has been stayed as a result of the
16 filing of a petition in federal bankruptcy court and an order is
17 entered in federal bankruptcy court granting relief from the stay or
18 closing or dismissing the case, or discharging the debtor with the
19 effect of removing the stay, the trustee may set a new sale date which
20 shall not be less than forty-five days after the date of the bankruptcy
21 court's order. The trustee shall:

22 (a) Comply with the requirements of RCW 61.24.040(1) (a) through
23 (f) at least thirty days before the new sale date; and

24 (b) Cause a copy of the notice of trustee's sale as provided in RCW
25 61.24.040(1)(f) to be published in a legal newspaper in each county in
26 which the property or any part thereof is situated, once between the
27 thirty-fifth and twenty-eighth day before the sale and once between the
28 fourteenth and seventh day before the sale.

29 (~~(+5)~~) (7) Subsections (~~(+3)~~) (5) and (~~(+4)~~) (6) of this section
30 are permissive only and do not prohibit the trustee from proceeding
31 with a trustee's sale following termination of any injunction or stay
32 on any date to which such sale has been properly continued in
33 accordance with RCW 61.24.040(6).

34 (8) The issuance of a restraining order or injunction shall not
35 prohibit the trustee from continuing the sale as provided in RCW
36 61.24.040(6).

1 **Sec. 7.** RCW 61.24.135 and 1998 c 295 s 15 are each amended to read
2 as follows:

3 It is an unfair or deceptive act or practice under the consumer
4 protection act, chapter 19.86 RCW, for any person, acting alone or in
5 concert with others, to offer, or offer to accept or accept from
6 another, any consideration of any type not to bid, or to reduce a bid,
7 at a sale of property conducted pursuant to a power of sale in a deed
8 of trust. The trustee may decline to complete a sale or deliver the
9 trustee's deed and refund the purchase price, if it appears that the
10 bidding has been collusive or defective, or that the sale might have
11 been void. However, it is not an unfair or deceptive act or practice
12 for any person, including a trustee, to state that a property subject
13 to a recorded notice of trustee's sale or subject to a sale conducted
14 pursuant to this chapter is being sold in an "as-is" condition, or for
15 the beneficiary to arrange to provide financing for a particular bidder
16 or to reach any good faith agreement with the borrower, grantor, any
17 guarantor, or any junior lienholder.

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